



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/23/1699

Re: Property at 32 Mauchline Road, Ochiltree (“the Property”)

Parties:

Mrs Elizabeth Gaffney, 32 Mauchline Road, Ochiltree (“the Applicant”)

Mrs Caroline Frew, Mr Scott Frew, 23 Holmhead Crescent, Logan, KA18 3HG (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Nick Allan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that That the Applicant is entitled to an order for payment for £5000.00 (FIVE THOUSAND POUNDS).

Background

1. An application was received by the Housing and Property Chamber dated 18th May 2023. The application was submitted under Rule 70 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondents not maintaining rent payments.
2. On 6th September 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 13th October 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 27th September 2023.

3. On 6th September 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by leaving it in the hands of the First Named Respondent. This was evidenced by Certificate of Intimation dated 6th September 2023.
4. On 6th October 2023 the Respondents emailed the Housing and Property Chamber attaching a submission which referred to disrepair in the Property.

Case Management Discussion

5. A CMD was held on 13th October 2023 at 2pm by teleconferencing. The Applicant was present and represented herself. She had with her Ms Lorraine Johnstone for support. Ms Johnstone took no part in the CMD. The Respondents were present and represented themselves.
6. The Applicant said that she was seeking an order for payment. There have been no further payments made to her. The Tribunal was unclear why the application said £8500 as this did not marry with the rent account. There was an outstanding amount due of £8250 in February 2023 and £9000 in March 2023. The Applicant said it had been a mistake and that it should read £8250 to reflect the rent account. The Tribunal noted that it was not prejudicial to the Respondents to amend. The amount was amended to £8250. Should the Applicant wish to increase the amount to £9000 then she can do this by contacting the Housing and Property Chamber no less than 2 weeks before the hearing.
7. The Tribunal asked the Applicant if the deposit had been returned by her and how much had been returned. The Applicant said that the deposit was entirely applied to damage to the Property. It had not been lodged in a deposit scheme so the Applicant had made her own decision regarding the deposit. The Tribunal noted that not lodging the deposit within an approved tenancy deposit scheme was a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The breach of the Tenancy Deposit Regulations is not within the remit of this Tribunal as there has not been any application lodged and any such application has not been conjoined.
8. The Second Named Respondent spoke for the Respondents on the majority of the CMD. He disputes that all the amount claimed is due. He said that in July 2021 that there had been repairs to the window. The Respondents were told by the Applicant's former partner that rent would not need to be paid for that month given the inconvenience caused to the Respondents by the repairs taking place. However, that month's rent has been applied to the rent account.
9. The Respondents said that the Property was in a state of disrepair. They said that the Property was damp. They contacted Environmental Health. Environmental Health did not attend to the Property until the summer. At that point it was deemed by Environmental Health that there was no damp in the Property. The Tribunal asked if it was damp or condensation in the Property. The Respondents said that he was not able to confirm this. They have photographic evidence of the effects of possible dampness or condensation.

10. The Second Named Respondent said the whole process, including the eviction, has been very stressful upon the Respondents. He said that it had caused the First Named Respondent to become unwell. As she was unwell she was not able to work. The Respondents have a business restoring prams. The First Named Respondent does the upholstery. This was not able to be done when she was unwell which meant that they were not able to finish the prams. This meant that the household income was greatly reduced. They were only receiving Tax Credits which was approximately £150 per fortnight. This was only paying for food for the Respondents and their 5 children. The Tribunal asked if there was any other income at that time such as Universal Credit. The Second Named Respondent said that he was a proud man and that he did not want to apply for state benefits. He said after that he was not aware of what he was entitled to. The Respondents did not seek money advice during this time of having a greatly reduced income. The Respondents stated how aggrieved they were with their eviction and that it had a very significant effect upon their family. The Tribunal noted that the decision for the eviction case was not a matter for this Tribunal. That case was decided prior to this application being submitted to another Tribunal.
11. It is noted that the Respondent's submission seeks redress of £8000. If the Respondents wish to seek this amount from the Applicant it must be done under a separate application which may be then conjoined. It is not for this Tribunal to consider that within the scope of this application.
12. As matters are in dispute the Tribunal continued to a full hearing to allow for evidence to be presented by both parties. The Ordinary member will be a surveyor member given the nature of the dispute. A direction will follow once the surveyor member has been appointed to allow time for the Tribunal to determine what it considers relevant to include within the direction. All supporting evidence should be lodged with the Housing and Property Chamber no less than two weeks before the hearing.
13. The Tribunal will look to address the following questions at the Tribunal:-
 - a) Is the payment for July 2021 due? Did the Applicant's partner confirm that the payment was not needed?
 - b) What was the disrepair the Respondents raised? Was it damp or was it condensation? What period was the said disrepair? What exact evidence that this affected the health of any member of the Respondent's household?
 - c) To what exactly was the deposit attributed? What was the evidence for this? Was the Applicant's decision to use the deposit in this manner illegal? What evidence was there for the damage claimed by the Applicant?
 - d) What date did Environmental Health visit and what was their results? Was this given in writing?
 - e) Should there be a deduction in the amount sought to reflect any disrepair to the Property? This should be evidenced.
 - f) What amount, if any, exactly do the Respondents consider that they owe the Applicant? This should reflect any reduction that they consider is appropriate for the period of disrepair. This will need to be evidenced.

14. The Tribunal noted that it was not limited to these questions.

The Hearing

15. A hearing was held on 25th January 2024 at 10am by teleconferencing. The Applicant was present and represented herself. She had with her Ms Lorraine Johnstone for support. Ms Johnstone took no part in the CMD. The Respondents were present and represented themselves.
16. The Tribunal noted that there had been a request for video evidence. This was only done the day before the hearing. There needs to be a qualification as to what it contains before it can be allowed. The other party needs time to see it and consider it before a hearing. Evidence should be lodged no less than 7 days before a hearing or CMD.
17. The Second Named Respondent spoke on behalf of both Respondents. He said that he accepted that some monies were due to the Applicant but not the whole lot. He did not accept that the payment in July 2021 should be included when he was told that it would not be due. He said that there were issues of disrepair and there were Covid issues.
18. The Second Named Respondent said that he had not been able to get medical evidence as the First Named Respondent's father had died just before Christmas. Both Respondents had been involved in his care and this had a significant impact upon them. The First Named Respondent has tried to get a letter from her doctor but needs an appointment with the GP first. The first available appointment is on 5th February 2024. This is the same reason that evidence had not been produced from Environmental Health.
19. The Second Named Respondent said that the payment of rent was affected by the Covid Pandemic. The Respondent's income had reduced greatly. The Second Named Respondent was not aware of his entitlement to benefits. He has worked all of his life and thought that benefits were only for those in local council housing. He has ADHD and this affects the way he deals with matters. The Tribunal said that the hearing will want to address why he did not undertake further investigations to his entitlement given that he had a legal obligation to pay the rent.
20. The Second Named Respondent said that he was not disputing half out of the outstanding amount which is £4125. He said that the deposit should be removed from that. He said that the Respondents are willing to pay £3125 to the Applicant.
21. The Applicant said that she had calculated that the amount due was £8500. The Tribunal raised with her again that the rent account said £8250. The Respondent accepted this amount. The Tribunal notes that she was entitled to raise it to the amount outstanding on the rent account but she needs to do this at 14 days in advance of the CMD or hearing. This needs to be in writing that she wishes to increase the amount due. Until such point the Tribunal must only proceed with the amount that has been claimed within the application. While this amount was £8500 it was not on the rent account. The rent account detailed £8250 for the end of

January 2023. This was discussed at the CMD on 13th October 2023. The Applicant accepted £8250 as the figure. She has deducted the deposit of £1000 from this. The Tribunal notes that the point regarding the deposit is not clear. It had been said at the CMD that the deposit was entirely attributed to damage cost. The Applicant must make it clear if this is to be deducted from the arrears or not.

22. The Applicant raised issues that she was aggrieved with the Respondents. The Tribunal made it clear to both parties that the scope of this hearing is to determine if there is an outstanding sum due to the Applicant for rent arrears. It is noted that there has been issues raised by the Respondents that query if the whole amount should be paid to the Applicant as they do not consider that they are liable because of issues of disrepair. The Tribunal needs to determine the evidence before them if, on balance, that the disrepair was due to the Applicant and if that has an effect upon the rent arrears. Other issues that both parties have raised which do not fall within the scope of that are not a matter for the Tribunal. The Tribunal stated to both parties that the focus of the discussions must remain on this point.
23. The Applicant said that the Property was in an excellent condition. It had been let out by a letting agent. The Applicant said that her marriage had broken down and she had to move back into the Property. To do this she had undertaken substantial repairs. While these repairs were being undertaken she lived in her caravan in the driveway. In the end she decided that she could no longer live in the Property due to the acrimonious ending of the tenancy. She noted that she had reasons to doubt the Respondents credibility and referenced that the Respondents were made a government Covid payment which contradicts that they only had Tax Credits as an income. The Applicant disputes that there was damp but that it was condensation from the way the Respondents have been drying their clothes.
24. The Tribunal adjourned to allow parties to negotiate to see if an agreement could be met. The Tribunal reconvened as there was no agreement. As the Tribunal was reconvened one of the Tribunal members was notified of an urgent family matter. The Tribunal was adjourned on compassionate grounds. Both parties were fully supportive of this adjournment. It is noted that parties can still negotiate by themselves. If they wish to negotiate but do not wish to do it by themselves then they can both appoint a representative to assist them. Details of representatives can be found on the Housing and Property Website. Evidence can still be lodged. All evidence must be in no less than 14 days before the next hearing date. The Tribunal will not accept late evidence. The case was adjourned to a new hearing date. A direction will be issued.

The Continued Hearing

25. A hearing was held on 25th January 2024 at 10am by teleconferencing. The Applicant was present and represented herself. She had with her Ms Lorraine Johnstone for support. The Respondents were present and represented themselves.
26. The Tribunal allowed parties an adjournment to determine if they were able to agree upon a settlement. Parties returned and confirmed that they were in agreement for the Respondents to pay the Applicant £5000 in full and final

settlement. The Respondents will pay the Applicant £4000 by Christmas 2024 and the remaining £1000 by March 2025. The Tribunal noted that it does not have the ability to dictate these terms upon this order but will note it within this decision. Both parties can take legal advice about the enforcement of this order. Both parties understood this point and wished to proceed with an order being granted for £5000.00.

Decision

27. The Tribunal found that the Applicant was entitled to be granted an order for payment amounting to £5000.00 (FIVE THOUSAND POUNDS).

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

G Miller

31st May 2024

Legal Member/Chair

Date